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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 December 1996, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.15 a.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

GENERAL DISCUSSION: "DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS" (agenda item 6) (E/C.12/1996/CRP.2/Add.1)

1. The CHAIRPERSON invited representatives of non-governmental organizations to take the floor in the general discussion on the draft optional protocol to the international Covenant, in accordance with the decision taken by the Committee at its fourteenth session.

2. Mr. TEITELBAUM (American Association of Jurists - AAJ) said that for the draft optional protocol to be approved by a large number of States, a comprehensive political realism taking due account of globalization would be required. Obviously, it was not the task of expert jurists to elaborate revolutionary documents. However, while AAJ's experience of the United Nations indicated that appeals to an alleged political realism might reflect a choice in favour of the status quo, it was also the case that positions considered by some to be too audacious had produced positive results.

3. AAJ believed that the proposed optional protocol should cover all the rights recognized in articles 1 to 15 of the Covenant. To require that a petitioner must himself be a victim would have the effect of leaving the most vulnerable groups outside its scope. In fact, no such requirement was included in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the procedure of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the procedures envisaged in the Constitution of the International Labour Organization (ILO), or in the Additional Protocol to the European Social Charter.

4. The possibility of allowing NGOs to submit complaints would not open the door to irresponsibility, since only NGOs enjoying some degree of national or international recognition would be authorized to present cases, in a way similar to that provided for in the Additional Protocol to the European Social Charter, the ILO procedures and the American Convention on Human Rights. NGOs should therefore be empowered to submit complaints even if they did not represent victims.

5. The Chairperson's revised report made no mention of the requirement that a petitioner must be within the jurisdiction of the State party denounced. In that connection, it should be borne in mind that with the advent of globalization, violations of economic, social and cultural rights often depended on a wide range of transnational factors and could no longer be resolved exclusively within national frontiers. The Human Rights Committee had already reached the same conclusion in respect of the International Covenant on Civil and Political Rights in the case of Lilian Celiberti de Casariego, finding that States parties could be responsible for the actions of their nationals even outside their national territory. Also, the

Inter-American Commission on Human Rights had declared admissible a complaint submitted by Panamanian citizens against the Government of the United States of America for the dropping of bombs on them and had been able to do so because the legal instrument concerned did not contain a jurisdiction requirement.

6. Moreover, the anachronistic precept that legal personality was attributed solely on the basis of a subject's belonging to a particular territory had already been discarded in various international instruments, including the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A jurisdiction requirement which failed to take account of transnational violations of economic, social and cultural rights should therefore not be included in the proposed optional protocol.

7. Also, the Committee's draft optional protocol, unlike most international instruments, would evidently make no provision for an inter-State complaints procedure. The argument that such a procedure was little used, especially in ILO, was not altogether convincing, since representatives of States regularly participated under the ILO procedure in the analysis of reports on other States and in the drafting of recommendations regarding States which did not comply with the rules in force. That was why the other procedures provided for in the ILO Constitution were not used. Moreover, the capital assets of transnational corporations were sometimes greater than the gross domestic product of some of the countries in which they operated. To deny the latter the right to submit complaints against the States where the multinationals concerned had their head offices was tantamount to supporting the law of the jungle in international relations. Furthermore, inter-State disputes in matters such as the use of water resources had to be taken into account.

8. Ms. BRAUTIGAM (Division for the Advancement of Women) noted that the Vienna Declaration and Programme of Action had encouraged the drafting of an optional protocol concerning the right of petition to the Convention on the Elimination of All Forms of Discrimination against Women. The Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women had responded by developing proposals for an optional protocol in 1995. The Committee, rather than submitting a draft of an optional protocol to the Commission, had chosen to present a series of elements to be included in such an instrument, which had formed the basis of the work done at the first session of an open-ended working group of the Commission on the Status of Women held in March 1996. The Secretary-General had also prepared a report containing comments received from Governments and NGOs on the optional protocol, including its feasibility.

9. The Committee's elements envisaged two procedures: a communications procedure and an inquiry procedure. The communications procedure was modelled essentially on the first Optional Protocol to the International Covenant on Civil and Political Rights and on the procedures envisaged in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, while the inquiry procedure resembled that provided for in article 20 of the latter Convention. The elements also contained details on issues such as standing, admissibility

criteria, consideration of the merits, views and follow-up. It was noteworthy that a broad approach was proposed to standing, allowing for the submission of communications by individuals, groups and organizations claiming to be victims of a violation or of a failure of a State party to fulfil its treaty obligations. It was also envisaged that complaints might be submitted by a person or organization having a sufficient interest in the matter. The admissibility criteria did not differ substantially from those provided for under other comparable international procedures, except for the elements concerning an unreasonably prolonged procedure elsewhere and the continuing effect of violations. The elements also provided for interim measures which were not explicitly contained in other procedures but which had become a standard feature in the rules of procedure and practice of other mechanisms.

10. With regard to the consideration of a communication on the merits, the elements again largely followed existing procedures. At the same time, certain features which were currently reflected in practice and case law, rather than in the provisions of the instruments themselves, were made explicit. Examples would be the provision of remedial measures to be taken by a State party found to be in violation of the Convention, and the ongoing institutionalized follow-up process in the framework of reporting under article 18. A strong emphasis was placed on mediation and the achievement of a settlement before views on a case had to be adopted.

11. The inquiry procedure would be initiated by the Committee if it received reliable information of serious or systematic violations of the Convention in a State party. An inquiry would be conducted by Committee experts and might include a visit to the territory of the State party with the latter's agreement. The experts would report to the Committee as a whole, and the results of the Committee's confidential review would be included in its annual report.

12. At its first session, the Working Group of the Commission on the Status of Women had held a general exchange of views on the issues, followed by a detailed review of the contents of each of the elements proposed for inclusion in the draft optional protocol. Early in its session it had been briefed by an expert from the Human Rights Committee on that Committee's experience in administering an optional protocol. The briefing had been followed by a very fruitful discussion of the Human Rights Committee's practices and case law. Later in the session, a further exchange of views had focused on issues of justiciability. The Chairperson of the Committee on the Elimination of Discrimination against Women had also addressed the Working Group, as had a representative of the Centre for Human Rights. In addition, NGOs had participated fully in the work. At the Working Group's first session it had been intended not to draft specific provisions of an optional protocol but to identify common viewpoints and to clarify the issues that would require further work and a more in-depth consideration. Very good progress had been made.

13. On 20 November 1996 the General Assembly had authorized the convening of a Working Group session to coincide with the next session of the Commission on the Status of Women, but it might not be held because of budgetary constraints. The Secretary-General had already been requested to prepare two reports: a comparative summary of the existing treaty-based and Charter-based

complaints and inquiry procedures, and a report reflecting the additional views of Governments, intergovernmental organizations and NGOs on an optional protocol. First impressions suggested that many replies highlighted the positive impact that such a protocol would have on the realization of women's human rights. Also in preparation for the next session of the Working Group, its Chairperson was convening briefings for interested delegations and NGOs up to March 1997.

14. The major concerns that had arisen had been in respect of duplication and overlapping, of justiciability, of standing, and of reservations. The problem of duplication and overlapping had been framed largely in terms of a streamlining of human rights mechanisms. It was expected that a mechanism paying particular attention to violations of women's human rights under the comprehensive provisions of the Convention on the Elimination of All Forms of Discrimination against Women, would also facilitate the achievement of mainstreaming. The development of gender-specific case law, of greater conceptual clarity to the gender dimension of human rights, and of the obligations of States parties to human rights treaties were expected to provide potential benefits, above and beyond redress in specific cases. The complementarities of a number of existing procedures were seen as positive examples rather than as cautionary tales of duplication. The comparative summary prepared by the Division for the Advancement of Women might also provide the Working Group with a better picture of how various mechanisms operated and of the tools available to avoid multiple consideration of the same case by different bodies. Admissibility criteria were, of course, a major tool for addressing that matter. The provisions and practices of United Nations treaty bodies and also of regional mechanisms such as the European system provided guidance in that regard. Likewise, the Centre for Human Rights maintained a register to keep track of all complaints received.

15. The question of justiciability had also been raised in the Working Group. The nature of the Convention on the Elimination of All Forms of Discrimination against Women had been perceived by some participants as being too "programmatic" to lend itself to scrutiny by an international supervisory body. However, it had been convincingly argued by many that the norms of equality and of non-discrimination, which formed the core of the Convention, had been found to be justiciable at the international, regional and national levels. It had also been pointed out by many, including experts from the Human Rights Committee, that no clear line could be drawn between justiciable and non-justiciable provisions and that classical civil and political rights required not only that States parties should respect rights but also that they should take measures to ensure their enjoyment. While States parties might have a degree of latitude in determining such measures, the latter could nevertheless be assessed by an international treaty body in the light of the standards set by the treaty. The importance of avoiding the creation of hierarchies of rights, on the basis of their degree of justiciability or non-justiciability, had also been emphasized, in order to preserve the integrity both of the Convention and of human rights in general. It had been suggested that the assessment of the justiciability of a provision or claim should be determined by the treaty body on a case-by-case basis. Such an approach would have a number of advantages, including the development of a body of case law further clarifying the obligations of States parties under

the treaty. It was anticipated that the Working Group, at its second session, might embark on a more detailed review of the individual provisions of the Convention in order to resolve the issue of justiciability.

16. The elements proposed a broad approach to standing which went beyond existing procedures. A further clarification of the implications of such a broader definition would be necessary. While it seemed that representation of the victim by a third party would be in accordance with the letter and practice of existing procedures, a right to submit a claim by a person or an organization "having sufficient interest" would require further discussion. Such a provision could cover the frequent systematic nature of discrimination against women. In that regard, a claim would benefit many women, or a specific group of women, but it would not appear to be necessary for each claimant to be identified by name.

17. The question of reservations had come up repeatedly, perhaps because the Convention on the Elimination of All Forms of Discrimination against Women was subject to a large number of them. There were essentially three areas of concern: first, whether any reservations could be entered to the optional protocol itself; second, if reservations could be entered to the optional protocol, it had to be made clear that no reservations could be entered to the Convention itself via the optional protocol; and third, whether the Committee could consider a communication regarding a provision of the Convention in respect of which the State party concerned had entered a reservation.

18. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education - OIDEL) said that his organization considered the adoption of an optional protocol on communications to be a matter of the highest priority for the advancement of economic, social and cultural rights and that such a protocol was awaited with great impatience by many NGOs.

19. In recent years several members of the Committee had evidently sensed a lack of political will in some Western countries. It was true that the prospects for social rights in Europe were not very promising. The Additional Protocol to the European Social Charter had been adopted, but even that left a feeling of incompleteness or even failure. In fact, the main arguments for challenging economic, social and cultural rights, primarily on the ground of non-justiciability, reflected a lack of political will rather than any concrete difficulties. The debate should therefore be focused on the real reasons rather than on false theoretical issues.

20. Nevertheless, a positive political will was being shown by certain other Governments, by NGOs and by the experts who could bring the adoption of an optional protocol to a successful conclusion. Some serious work would have to be done, and in particular an effort would have to be made to convince those States that still had misgivings. The optional protocol would come to life if the main obstacle to it - ignorance - was overcome. OIDEL was prepared to take part in a public awareness campaign and to collaborate closely with the Committee and the Secretariat to that end. The effects of globalization and the scope of the optional protocol would be the central topics at OIDEL's 1997 summer university course.

21. With regard to the proposed text of the optional protocol, OIDEL considered that a procedure for inter-State complaints was necessary, that the optional protocol must cover all rights, and that individuals and "sufficiently concerned" groups should be entitled to submit communications, as in ILO. In any event, the optional protocol should not provide for anything less than was recognized in the ILO Conventions, the European Social Charter and the Protocol of San Salvador.

22. Mr. WIMER ZAMBRANO, expressing his appreciation of Mr. Teitelbaum's contribution, asked him to elaborate on the issue of dual obligations.

23. Mr. TEITELBAUM (American Association of Jurists - AAJ) said that States had an obligation under article 1, paragraph 2 of the Covenant to refrain from violating the economic rights of other States, particularly those of less affluent neighbours. They also had an obligation to take positive measures to increase enjoyment of all rights.

24. Mr. ALVAREZ VITA welcomed the NGO contributions. He would like Mr. Teitelbaum to comment on the issues of universal jurisdiction and inter-State complaints, and asked if he could make an especially pertinent student paper available to the entire Committee.

25. Mr. RATTRAY noted the shared concern of NGOs over the impact of globalization and the need for the Committee to accord greater universality to its provisions. How effective did Mr. Teitelbaum think the proposed protocol might be in helping to deal with inter-State complaints on issues relating to international financial and other assistance to less fortunate members of the world community. Such assistance was, after all, vital to the realization of certain rights. At the same time, the possibility of the enforceability of claims against States for lack of assistance might well dissuade the latter from becoming parties to the optional protocol.

26. Mr. SIMMA noted that one NGO speaker had assumed that the debate on the optional protocol was still in its infancy. In actual fact, the Committee had discussed the key issues, particularly the inter-State procedure, at considerable length and the draft protocol would shortly be forwarded to the Commission on Human Rights. The focus must now be on issues such as standing, NGO access, the link between groups and immediate victims of violations, and whether States should be allowed to opt out of certain provisions in the manner suggested by Mr. Ceausu.

27. Mr. TEITELBAUM (American Association of Jurists), responding to Mr. Alvarez Vita, said that when the proposed protocol was in the early drafting stage, the Committee had focused on the issue of a State's responsibility to ensure respect for human rights within its own territory. Less thought, however, had been given to the universal obligation incumbent on States to respect human rights in all territories, and to States' violations of rights beyond their own borders. All international law was based on relations between States, and those relations were not always harmonious. The International Law Commission and other such bodies had established international norms for transnational issues such as the pollution of international waterways and atmospheric pollution.

28. Replying to Mr. Rattray, he agreed that there was a contradiction between States' obligations to respect rights and the status of international relations. Whenever a State was physically unable to ensure particular rights, it should be encouraged to bring the matter before the Committee in view of States' shared responsibility, or co-responsibility, under the Covenant and their consequent duty to assist. Refusal to cooperate on the part of a financial institution or major Power amounted to a violation of the Covenant's provisions.

29. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education - OIDEL) said that he would make available student papers on the work of the Committee and the proposed optional protocol. At a recent summer school, students had expressed concern over the universality of economic, social and cultural rights in the context of globalization, and had stressed the need to make the Committee's procedures more accessible. The International Labour Organization and various NGOs had set important precedents in that field.

30. The CHAIRPERSON thanked the NGO representatives for their submissions, which were indispensable to the work of the Committee, and invited members to pursue the general discussion with reference to the revised report which he had prepared on the draft optional protocol (E/C.12/1996/CRP.2/Add.1). In the interests of consensus, Mr. Grissa would not be present during the discussion as he disagreed with the project as a whole.

31. Mr. WIMER ZAMBRANO asked whether Ms. Taya was still strongly against the proposed protocol.

32. Ms. TAYA confirmed that her position remained unchanged, and that she shared Mr. Grissa's view.

33. Mr. AHMED said that he would not be able to endorse the text unless it authorized NGOs to represent victims.

34. The CHAIRPERSON suggested that the Committee should return to that issue at a later stage. It might prove to be one of the instances calling for a reflection of divergent approaches in the final report.

35. Mr. SIMMA said that he had a specific query about the wording of draft article 1 (para. 38 of document E/C.12/1996/CRP.2/Add.1). Were the words "subject to its jurisdiction" to be deleted or retained?

36. The CHAIRPERSON said that according to his understanding, the Committee had agreed to reinsert those words in another part of the text. However, he had found that that solution raised drafting difficulties of its own and therefore proposed that the words should be reinstated so that the end of draft article 1 would read: "... individuals or groups subject to its jurisdiction in accordance with the provisions of this Protocol".

37. It was so decided.

38. The CHAIRPERSON, inviting further comments on whether a flexible or a holistic approach to the optional protocol should be adopted, recalled that

some argued that the Committee ought to convey to the Economic and Social Council its strong belief in the indivisibility of rights and the danger of the limited application of rights on the part of States. The opposing view was that while States might not accept the protocol's coverage of all rights, they might be more amenable if specific rights, with corresponding obligations, were listed. That approach would enable States gradually to extend their acceptance of an ever broader range of rights.

39. Mr. SIMMA said that, if the Committee were formulating a treaty text, the misgivings of those favouring the flexible approach would be understandable. There was, however, no point in trying to forestall all the problems that might arise; that would be akin to a restaurant offering a menu in which the diner was warned off every dish. The effect of the protocol was in any case unpredictable. It was noteworthy that some of the best results that the Committee had achieved had been within the framework of article 11, which would seem to contain one of the least justiciable of rights. The Committee should adopt the comprehensive approach, to which Governments and others might then raise objections.

40. Mr. RATTRAY said that the problem was a difficult one. Obligations arose from the Covenant itself, not from the optional protocol, which was merely a mechanism giving individuals a right of access to the Committee. It therefore had no direct bearing on the indivisibility or justiciability of rights. The question was rather how best to achieve access for complainants. When States had first dealt with the Committee, they had felt threatened and had tried to defend the indefensible. The Committee had in the end successfully persuaded them to believe that it aimed at constructive dialogue. The results had been encouraging and the jurisprudence of some States had developed correspondingly. What had to be established was whether such States felt confident enough to allow individuals the right of access to the Committee. His heart said that they did, his head that they did not. Thus, although theoretically he would favour the comprehensive approach, the danger was that States would ignore the Committee altogether, judging it to be out of touch with reality. He would therefore prefer the evolutionary approach, with the proviso that the onus would be on States to choose which rights they considered inadmissible for individual complaints, rather than being allowed to submit their own list of approved rights ("opting out" rather than "opting in"). He hoped that a progressive approach of that nature, just short of comprehensiveness, would lead to wide - and ultimately universal - acceptance of the optional protocol.

41. Mr. TEXIER, after expressing regret for his absence from previous meetings, at which decisions had been made that he did not agree with, said that he favoured the comprehensive approach because if States were allowed to pick and choose there was nothing to stop them questioning the admissibility of the right to life or freedom of information, for example. The Committee was convinced of the universality of human rights and its credibility would be in question if it gave in to the progressive approach.

42. The draft text could be improved in two ways. First, it should be modelled as closely as possible on the first Optional Protocol to the International Covenant on Civil and Political Rights. Secondly, the preamble should explicitly mention the interdependence, universality and indivisibility

of human rights. The experience of other human rights bodies suggested that most States would try to restrict the scope of admissibility of complaints, so it was incumbent on the Committee to make the protocol as comprehensive as possible. Having agreed the text, members should support it with all possible enthusiasm and indeed, actively promote it.

43. Mr. KOUZNETSOV said that despite the potential problems, which he recognized, he thought that the comprehensive approach should be adopted. Governments would not thereby be forced to fulfil their obligations. In any case, the Committee would not be able to prevent reservations being entered as had occurred when the Covenant itself was being ratified. India, for example, had entered a reservation regarding the whole of article 1 of the Covenant and there was no reason to believe that it would not adopt a similar attitude to the optional protocol. Every Government knew its limit of tolerance on human rights and it would thus be as well to make the protocol as comprehensive as possible.

44. Mr. MARCHAN ROMERO said that his support for the comprehensive approach had been strengthened by the arguments of the previous speakers. The obligations of States parties were clearly laid out in the Covenant, so there was no reason why States that had signed it should have a valid objection to individuals having access to the Committee. Similarly, if they entered reservations to the optional protocol, their original commitment to the Covenant would be open to question. The universality of human rights would be threatened either if a State took the view that individuals could not complain or if States could pick and choose between rights.

45. Mr. ADEKUOYE read aloud from a summary record of the Committee's meeting on 30 May 1996 (E/C.12/1996/SR.19), at which Mr. Simma had "favoured a more modest approach to the application of economic, social and cultural rights" because of their "significant financial implications". He had also been in favour of "allowing States to give preference to certain rights over others, in accordance with their possibilities." How did Mr. Simma reconcile that view with his current position?

46. Mr. SIMMA said that he had changed his mind. What he had said before had been based on the wrong assumption that the optional protocol would have formal legal value. He did not deny the importance of the objections he had raised previously, but he had come to the conclusion that such difficulties as arose should be for senior government officials - and not for the Committee - to resolve. In any event, he hoped that the Committee would be able to reach a decision, whatever it might be. The protocol might contain a reference to the possibility of an opting-in or opting-out procedure, though his own preference would be against that; no such provision existed in the first Optional Protocol to the International Covenant on Civil and Political Rights.

47. Mrs. BONOAN-DANDAN declared herself still in favour of the comprehensive approach. Her view of realism was different from that of Mr. Rattray: whatever form the optional protocol took it would be contentious, since Governments found it frightening. It was important, however, to send a strong signal to them and to others, even though regrettably the Committee did not carry as much weight as it deserved. Once a draft text had been agreed, members must commit themselves to the protocol and convince States to ratify

it. If they stood firm for their own belief in the indivisibility of human rights, the protocol might achieve its desired effect, against all the odds. She added that human rights were a matter not for the head but for the heart, which had its own rationale.

48. Mrs. JIMENEZ BUTRAGUEÑO expressed her appreciation of the statements made by the NGOs attending the meeting and in particular that of the representative of the Division for the Advancement of Women. She welcomed the news that Mr. Simma had changed his mind since the last session on the issue of the optional protocol. She personally was in favour of the broadest possible scope for the instrument.

49. Mr. RATTRAY said there remained one concern that warranted reflection but for which he had no ready answer. If members were so convinced of the need for a protocol that was universal in scope, then why must it be called "optional"?

50. Mr. AHMED observed that although Mr. Simma had changed his mind, Mr. Rattray, Mr. Adekuoye and Mr. Ceausu and he maintained the conviction that a comprehensive approach would frighten off those States parties which were already hesitant regarding the optional protocol. For unlike with the International Covenant on Civil and Political Rights, the implementation of economic, social and cultural rights entailed monetary expenditure. Under the Covenant, States parties were currently afforded some leeway in that they were called upon to achieve the full realization of such rights not in one fell swoop but rather progressively and depending on their available resources. Moreover, the five-yearly reporting mechanism meant that States parties and, in particular, developing countries had sufficient time between one periodic report and another to implement their five-year economic plans and be in a better position to defend themselves during the subsequent dialogue with the Committee. However, the proposed optional protocol relied on a complaints mechanism under which States parties could be requested at any time, and perhaps more than once a year, by the Committee to clarify alleged violations. The optional protocol was supposed to supplement existing reporting procedures, but by adopting a comprehensive approach to human rights it would supplant the existing mechanism in a very flagrant manner.

51. He was certain that the complaints mechanism would prove extremely unpopular among States parties and would not therefore guarantee the universality of the protocol. In order to gain credibility, the instrument must be signed by as many States parties as possible from all regions. He took the view that by being too ambitious the Committee would not help the cause with the parent bodies and needed to be more modest in its demands in order to achieve success.

52. Mr. TEXIER said that it was inappropriate to draw comparisons between the reporting mechanism and a complaints procedure. Nor were there grounds to fear that the Committee would be inundated with communications - that was not the experience of the Human Rights Committee. He did not concur with the view that the optional protocol would frighten off hesitant State parties. Thirty years after the adoption of the Covenant the time had come for the

Committee to demonstrate that economic, social and cultural rights should be treated on a par with civil and political rights, and the introduction of any restriction would prove counter-productive.

53. He did not believe that the optional protocol was too ambitious a proposal, or that it might undermine the Committee's current working methods. It would, however, fill an obvious gap in current procedure by enabling the Committee to deal with gross violations of the Covenant, such as the mass eviction of peasants from their land which had recently occurred in Colombia. In that case, the only recourse currently available to the Committee was to send letters to the Colombian authorities as a follow-up to their periodic report, with no guarantee of receiving a reply. That was clearly not a satisfactory solution. He was in favour of the global approach to the issue, but the Committee was still divided and there seemed little likelihood of reconciling the two camps in the short time available. The problem therefore remained of how to present the Committee's views in its report to the Commission.

54. Mr. ALVAREZ VITA said that the Committee must submit a report to the Commission which contained innovatory ideas. There was absolutely no point in working on a draft optional protocol unless it outlined a procedure which differed from that used by the Committee thus far.

55. Mr. SIMMA, referring to Mr. Rattray's remarks, said that the designation "optional" seemed pleonastic in the context and made little sense, since the protocol would not be binding on any State party. He rejected Mr. Ahmed's argument that the optional protocol would supplant the Committee's current procedure for monitoring compliance with the Covenant. For regardless of whether States parties ratified the new instrument, their reporting obligations would remain unchanged. As to the scenario of States parties being inconvenienced by frequent summonses to defend allegations before the Committee, it was worth noting that a total of some 800 individual petitions had been registered with the Centre for Human Rights in the last 20 years in connection with the work of the Human Rights Committee. He recalled that one of the proponents of the "à la carte approach" had suggested the possibility of including a provision in the draft optional protocol whereby States parties could opt out of obligations regarding certain articles of the Covenant. Would those members who were now totally opposed to the idea of a comprehensive approach consider such a possibility by way of a compromise solution?

56. Mrs. AHODIKPE said that she firmly believed in the principle of the indivisibility of human rights and also wished the Covenant to be placed on an equal footing with other similar treaties. One problem that had not been discussed was what the Committee would do in the event of overlapping rights. Would it consider exclusively the economic, social and cultural aspects or else endeavour to reconcile its position with that of the other Committee in question?

57. The CHAIRPERSON asked whether those members who were opposed to the idea of a comprehensive approach might consider the possibility of including an opting-out provision along the lines originally proposed by Mr. Rattray and Mr. Ceausu, as suggested by Mr. Simma. According to such a solution, any

State party might stipulate specific rights in relation to which it would not accept the procedures laid down in the protocol. That would have precisely the same effect as entering reservations regarding certain articles, as mentioned by Mr. Kouznetsov.

58. Mr. ADEKUOYE said he wondered what would happen when a State party having agreed to the procedure under the protocol regarding a certain right was subsequently unable to honour its obligations owing to an unforseen downturn in a particular sector of the economy. Also, how would the Committee react when recommendations were made to government representatives in the light of a State party's failure to respect certain rights but were not subsequently followed up on the grounds that they had not been approved in Parliament?

59. The CHAIRPERSON assured Mr. Adekuoye that the Committee would take due account of dramatic fluctuations in available resources, as guaranteed by the inclusion in the preamble to the optional protocol of the same qualification as was contained in the Covenant. As to Mr. Adekuoye's second concern, in line with the Optional Protocol to the International Covenant on Civil and Political Rights, under the new instrument the Committee would only be able to express its final views on such matters, which might or might not be followed up by the Parliament of the State party in question. In the absence of such follow-up, the Committee could do no more than indicate that such action constituted a violation of the Covenant.

60. Mr. ALVAREZ VITA said that drawing distinctions between the different rights in a given treaty would not be in keeping with the doctrine of human rights. Furthermore, since the Committee had sometimes invited reporting countries to consider the possibility of withdrawing its reservations regarding the Covenant, the inclusion of an opting-out clause in the protocol would surely undermine the Committee's achievements of recent years. It would likewise run counter to the spirit of the protocol itself and the entire corpus of human rights recognized under other similar instruments. Such a proposal also raised a number of legal and ethical issues which were difficult to resolve. He was of the opinion that, in principle, human rights treaties should not be subject to reservations. He suggested that the Committee should focus less on its report to the Commission on Human Rights and other relevant bodies and more on the human rights issues for which it had expertise.

61. The CHAIRPERSON invited members to reflect on three points before the following meeting with a view to making headway in the debate and coming as close to a consensus as possible. First, it should be emphasized that the proposed optional protocol would not in any way affect the obligations of States parties under the Covenant. Second, since States parties would have the option of rejecting the protocol, it was by definition an "optional" instrument. Furthermore, it was not the type of instrument that could not be subject to reservations. Third, there were many precedents for a more limited approach at regional level, including the European Social Charter Providing for a System of Collective Complaints and the Protocol of San Salvador, whose scope was confined to two rights, namely the right to education and the right to form trade unions.

The meeting rose at 1 p.m.